



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 379 OF 2025

Mohyodeen Habiboddeen Kazi @
Mohiuddin Habibuddin Kazi .. Petitioner
Versus
Tabassum Fatima Mohiuddin Kazi .. Respondent

Shri Shaikh Ashraf Patel, Advocate for the Petitioner.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 26TH MARCH, 2025.**

FINAL ORDER :

. Petitioner is challenging order dated 23.01.2025 passed by the learned Sessions Judge, Parbhani in Criminal M. A. No. 122 of 2024 seeking transfer of the P.W.D.V.A. No. 01 of 2024.

2. Respondent No. 1 preferred P.W.D.V.A. No. 01 of 2024 before the Judicial Magistrate First Class, Pathri against the petitioner. During the pendency of the proceedings order below Exhibit 01 was passed on 22.02.2024 giving custody of the minor daughter to the respondent and that was to be executed within three days. Another order was passed on 03.08.2024 below Exhibit 25 rejecting the application of the petitioner to have DNA test of one of the issues born out of the wedlock as he is disowning the fatherhood. The petitioner was aggrieved by the manner in which the orders are passed. He apprehended that the presiding officer would not conduct the proceedings in unbiased and fair manner. Hence Criminal Application No. 122

of 2024 was filed before the Sessions Judge, Parbhani seeking transfer of the proceedings from J. M. F. C. Pathri to any other competent Court in Parbhani District.

3. Learned counsel for the petitioner submits that the impugned order is very cryptic and the grievance of the petitioner has not been dealt with by the learned Judge. It is submitted that the manner in which interim orders were passed, was highly objectionable. It is further contended that the respondent and her family members are influential and he apprehended danger to his life, if he was to go to Pathri to attend the proceedings. It is submitted by the learned counsel for the petitioner that the impugned order is perverse and liable to be set aside.

4. The petitioner has raised following grounds for transferring the proceedings :

- (i) The manner in which interim order dated 22.02.2024 below Exhibit 01 and order dated 03.08.2024 below Exhibit 25 are passed. Interim custody was directed to be given within three days. Though the respondent was also agreeable for DNA test, the request was refused.
- (ii) No proper opportunity was given to the petitioner.
- (iii) The petitioner lost faith in the Presiding Officer. He apprehends that he is not likely to get fair opportunity.

(iv) He apprehend danger to come down to Pathri to attend the proceedings.

5. It is informed by the learned counsel for the petitioner that against both the interim orders referred to above, appeals are filed before the Sessions Court. The Appellate Court, which is seized of the matter can look into the merits of the case as well as manner in which the orders are passed. It is also open to examine as to whether opportunity was given or not as well as to consider propriety of prescribing only period of three days for handing over custody of the minor daughter. I do not find that these could be good grounds to transfer the proceedings.

6. The grievance that the petitioner lost faith in the Presiding Officer is misplaced. In all probabilities just because interim orders are against him the grievance is being made.. I do not find any foundation to it. If he has any apprehension against the respondent or her relatives, then he would be at liberty to seek police protection. The transfer of the proceedings cannot be a solution.

7. I do not find that there is any perversity committed by the learned Judge. The criminal writ petition is dismissed.

[SHAILESH P. BRAHME J.]